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8 UNITED STATES DISTRICT COURT
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10 NORTHERN DISTRICT OF CALIFORNIA
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12 SAN JOSE DIVISION

13 UNITED STATES OF AMERICA,
14 Plaintiff,
15 v.
16 JOHNNY RAY WOLFENBARGER,
17 Defendant.

Case No. 16-CR-00519-LHK-1

**ORDER DENYING GOVERNMENT'S
MOTION IN LIMINE RE: ADMISSION
OF WESTERN UNION SPREADSHEET**

Re: Dkt. No. 293

18 Before the Court is the government's motion in limine to admit a "spreadsheet containing
19 records of Western Union [m]oney transfers," which the government filed on April 1, 2020. ECF
20 No. 293 ("Mot") at 1. Because the spreadsheet contains personally identifiable information, the
21 spreadsheet was submitted electronically for the Court's review under seal. *See* ECF No. 300.
22 Defendant filed an opposition on April 8, 2020. ECF No. 302 ("Opp'n"). Having considered the
23 filings of the parties, the relevant law, and the record in this case, the Court DENIES the
24 government's motion in limine.

25 Because the government seeks to introduce these records for the truth of the matter
26 asserted, the rule against hearsay bars their admission unless an exception or exclusion applies.
27

1 Fed. R. Evid. 802; *see United States v. Arteaga*, 117 F.3d 388, 395 (9th Cir. 1997) (explaining that
2 Western Union records included both explicit and implicit assertions subject to the rule against
3 hearsay, such as the amount that was sent and the identity of the recipient). Thus, the government
4 seeks to admit the spreadsheet pursuant to Federal Rules of Evidence 803(6) and 902(11).

5 Rule 803(6), the “business records” provision, provides a hearsay exception for “records of
6 a regularly conducted activity.” The provisions of Rule 803(6) incorporated by Rule 902(11)
7 require that:

- 8 (A) the record was made at or near the time by — or from information transmitted
by — someone with knowledge;
- 9 (B) the record was kept in the course of a regularly conducted activity of a business,
organization, occupation, or calling, whether or not for profit;
- 10 (C) making the record was a regular practice of that activity;
- 11 (D) all these conditions are shown by the testimony of the custodian or another
qualified witness, or by a certification that complies with Rule 902(11) or (12) or
with a statute permitting certification; and
- 12 (E) the opponent does not show that the source of information or the method or
circumstances of preparation indicate a lack of trustworthiness.

13 Fed. R. Evid. 803(6)(A)–(E). As Rule 803(6)(D) specifies, the party seeking admission of a
14 business record must either have a custodian or other qualified witness testify as to the Rule
15 803(6)(A)–(C) conditions, or have the record be “self-authenticating” pursuant to Rule 902(11) or
16 (12).

17 In turn, Rule 902(11) allows the admission of “self-authenticating” business records
18 without further “extrinsic evidence of authenticity.” To qualify, the original or copy of the
19 domestic record must have “a certification of the custodian or another qualified person” that shows
20 that the record “meets the requirements of Rule 803(6)(A)–(C).” Fed. R. Evid. 902(11). The
21 required “certification” may take the form of a declaration that satisfies 28 U.S.C. § 1746, or any
22 comparable certification under oath. Fed. R. Evid. 902 advisory committee’s note to the 2000
23 Amendments; *see also SEC v. Franklin*, 348 F. Supp. 2d 1159, 1164 (S.D. Cal. 2004) (explaining
24 that a Rule 902(11) certification may be a 28 U.S.C. § 1746 declaration).

Here, the Western Union Certificate of Authenticity of Business Records (“Certificate”) merely states that each of the attached records is “the original or a duplicate of the original records in the custody of Western Union.” ECF No. 293-1. The Certificate conclusorily states that “these records were made, at or near the time of the occurrence of the matters set forth, by (or from information transmitted by) a person with knowledge of those matters; these records were kept in the course of regularly conducted business activity; and it was the regular practice of this business to make such records.” *Id.*

The Certificate fails to distinguish between the spreadsheet and the underlying data or records from which the spreadsheet was created. The Certificate fails to identify the source of the information within the spreadsheet and the source of any underlying data or records as required by Rule 803(6)(E). The Certificate fails to identify the method or circumstances of the preparation of the spreadsheet or its underlying data or records as required by Rule 803(6)(E). Because the government has failed to establish that the spreadsheet satisfies the requirements of Rule 803(6)(E), the Court DENIES the government's motion.

IT IS SO ORDERED.

Dated: June 4, 2020

Lucy H. Koh
LUCY H. KOH
United States District Judge